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10/721,150	11/26/2003	Yoshifumi Ishihata	K6510.0064/P064	5542
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DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			EXAMINER PIERCE, DAMON JOSEPH	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,150

Applicant(s)

ISHIHATA ET AL.

Examiner

DAMON PIERCE

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) 22, 24, 26, 28 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, 23, 25, 27 and 29-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species of Fig. 5 to claims 21, 23, 25, 27, and 29-33 in the reply filed on 9/19/08 is acknowledged.

Response to Amendment

2. Amendments submitted on 3/24/08 are now entered. The examiner acknowledges the amendments of claims 21. Currently, claims 21, 23, 25, 27, and 29-33 are pending.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 21 and 31 include the recitations "memorize respective distances of said plurality of characters from said predetermined base point before a predetermined time from present time in said memory", which is unclear and ambiguous; and "judge each of said plurality of characters as to whether or not it is a selectable candidate object based upon a content of said memory and whether its distance before said predetermined time is below said first distance and additionally its distance at said present time is below said second distance, or whether its distance at

said present time is below said first distance and angle", which states the judging process of characters in an alternative form, however, the examiner does not completely understand what the scope or metes and bound of the claimed invention includes by reading the claims as presented. The claim language must be written in a matter comprehensible for a person of ordinary skill in the art to comprehend what it is the applicant has claimed as his/her invention, and claims as currently presented do not meet this requirement. As best understood the above recitation of claims 21 and 31 are describing an aspect of the video game that detects distances when enemy characters are available for attack by the player controllable character (PCC).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 21 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galaxian Video Game, Galaxian Video Game by Namco – The International Arcade Museum and the KLOV, and Galaxian game play (all game descriptions, details, and game play of Galaxian is herein referred to Galaxian).

Regarding independent claims 21, and 31, the instant application as best understood is an invention that describes a video game having a plurality of characters, where the player controllable character (PCC) can attack enemy game characters based on their distances from the player character.

In Reference to Claims 21, 31

Galaxian discloses an electronic device, and a computer readable storage medium storing a control program for an action game in which a player character is moved in a game space in response to an operation of a game player and in which one character of a plurality of characters moving in the game space is selected to be an attack target, in response to an operation of the game player (Galaxian is a computer and video game where a player controllable character (PCC) moves through a virtual space shooting and killing different alien game characters, please see demo and game play via websites provided of Galaxian),

the control program, when executed by a computer, causes said computer to:
set a first distance and a second distance which is above the first distance as a distance of said one character from a predetermined base point to memorize the

first distance and the second distance in a memory (Galaxian discloses a plurality of alien game characters at different distances from the base point of PCC; for instance, at the start of game play, the first distance is the first line of alien characters, closet to the PCC, and the second distance is the second line of alien characters, directly preceding first line of alien characters);

memorize respective distances of said plurality of characters from said predetermined base point before a predetermined time from present time in said memory (the video game of Galaxian inherently memorizes alien characters' positions and distances prior to changing the alien character's positions and distances at a predetermined time when alien characters move closer to the PCC);

judge each of said plurality of characters as to whether or not it is a selectable candidate object based upon a content of said memory (game memory inherently detects which alien characters which are available for a kill in Galaxian) and whether its distance before said predetermined time is below said first distance and additionally its distance at said present time is below said second distance, or whether its distance at said present time is below said first distance (again Galaxian inherently determines which alien characters are attackable based the distance and position of each alien character remaining in the game, for instance, when the game starts a PCC can only attack the alien characters in the first distance, or other ships that flies past the first line of alien characters in an attempt to destroy PCC);

decide an order of selecting those of said judged plurality of selectable candidate objects based upon those distances at said present time of said plurality of selectable candidate objects (a player selects the order in which he/she wishes to shoot down alien characters based the distance and position of each alien character remaining in the game, for instance, when the game starts a PCC can attack any of the alien characters in the first distance, or other ships that flies past the first line of alien characters in an attempt to destroy the PCC); and

select, based on the decided selection order, one of said plurality of characters as said attack target and sequentially changing said attack target in response to an attack target changing operation by the game player (a player must choose which alien characters to shoot based the game's programmed commands of aliens' formations and the order in which aliens come flying down toward PCC).

8. Claims 21, 23, 25, 27, 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. # 6,217,446 to Sanbongi et. al (Sanbongi).

In Reference to Claims 21, 31

Sanbongi discloses an electronic device (col. 1, 7, "gaming machines"), and a computer readable storage medium (col. 4, 55, "information storage medium") storing a control program (col. 4, 56, "program") for an action game in which a player character is moved in a game space in response to an operation of a game player and in which one

character of a plurality of characters moving in the game space is selected to be an attack target, in response to an operation of the game player (col. 3, 33-52, discloses where a player moves through a virtual space attacking different game characters within a gaming machine),

the control program, when executed by a computer, causes said computer to (col. 4, 55-59, discloses a "program" is executed on "game device"):

set a first distance and a second distance which is above the first distance as a distance of said one character from a predetermined base point to memorize the first distance and the second distance in a memory (Fig. 6, discloses an "attacking zone", 1st distance, and "waiting zone", 2nd distance above the 1st distance, both of which are centered around the player controllable character (PCC), see col. 19-31 for further details of zones, where enemies' (such as "zombies") distances and positions are inherently stored in the game's memory);

memorize respective distances of said plurality of characters from said predetermined base point before a predetermined time from present time in said memory (the video game inherently memorizes all game characters' positions including enemy characters' positions and distances as they move toward the PCC, see col. 6, 3-7, which discloses the "RAM" of the video game that continuously stores and buffer game data);

judge each of said plurality of characters as to whether or not it is a selectable candidate object based upon a content of said memory (game memory inherently detects which enemy characters which are available for a kill, whether is be a

some or all of the game enemies displayed on game screen) and whether its distance before said predetermined time is below said first distance and additionally its distance at said present time is below said second distance, or whether its distance at said present time is below said first distance (when there are a plurality of enemy characters presented during the course of game play the CPU/game processing units inherently determines which enemy characters are attackable based the distance and position of each enemy character in relation to PCC, for example, when there are two zombies remaining in a game scene, a PCC has the option within a predetermined amount of time to kill both zombies before an attack is made on the PCC);

decide an order of selecting those of said judged plurality of selectable candidate objects based upon those distances at said present time of said plurality of selectable candidate objects (a player selects the order in which he/she wishes to attack enemy characters based the distance and position of each enemy character remaining in the game, for example, a player would intuitively select to kill the zombie closet to the PCC in order to preserve the life and strength of the PCC); and

select, based on the decided selection order, one of said plurality of characters as said attack target and sequentially changing said attack target in response to an attack target changing operation by the game player (again, a player selects the order in which he/she wishes to attack enemy characters based the distance and position of each enemy character remaining in the game).

In Reference to Claims 23, 25

Sanbongi discloses a computer readable storage medium according to claims 21, wherein when at least one of said plurality of characters becomes ineffective as an attack target, the selection order of the selection qualified candidates is re-decided;

wherein the characters are present in the game space and are increased or decreased in accordance with advance of the game in response to operations of the game player (col. 4, 20-26, when "enemy characters" are "dead" they become ineffective which causes characters in the game to decrease, and the game proceeds to new "enemy character").

In Reference to Claims 27

Sanbongi discloses a computer readable storage medium according to claims 21, wherein the characters are attack targets of a character operated by the game player (col. 5, 40-43, "input device" is a weapon used by player to attack "enemy characters").

In Reference to Claims 29 and 32

Sanbongi discloses an electronic device and a computer readable storage medium according to claims 21 and 31, wherein said predetermined base point is positioned at said player character in said game space; and said respective

distances are those in said game space (Fig. 7, where camera in the figure represents the player character which is the base point).

In Reference to Claims 30 and 33

Sanbongi discloses an electronic device and a computer readable storage medium according to claims 21 and 31, wherein said predetermined base point is a center point of a game display image which said game space is projected to; and said respective distances are those in said game display image (Fig. 7, where camera in the figure represents the player character which is located at the base and center of screen).

Response to Arguments

9. Applicant's arguments filed 3/24/08 and 5/23/08 have been fully considered but they are not persuasive.
10. In regards to arguments regarding independent claims 22 and 34 are now moot since claims 22, 24, 26, and 34 has been restricted and are no longer pending.
11. Regarding claims 21, 23, 25, 27, and 29-33, the rejection under Sanbongi has been modified to a 35 U.S.C. 103(a), because the claimed missing elements are deemed inherent and/or obvious to a video game taught by Sanbongi.

For example, 1) memorizing a distance of an enemy character before a predetermined time from present time, however, Sanbongi discloses zombie enemy characters where distances of all game characters are inherently memorize during

game play, and in particular, zombies are given a set amount of time prior to attacking the player character; 2) the game characters are judged as to whether they are selectable candidate objects, however, it is well known in the video gaming art that in that many cases all game characters are not available for attack by the game character, such a civilians, or allies which are typically judged as non-selectable candidate objects in war-type or battle games; 3) decide an of selecting enemy characters based upon distances at the preset time, however, it is inherently known that a game player would most likely attack or attempt to destroy enemy characters closet to the game character, where this judgment is based on a combination of enemy character's distance and player's selection.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAMON PIERCE whose telephone number is (571)270-1997. The examiner can normally be reached on 8AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/
Supervisory Patent Examiner, Art Unit 3714

DJP